

**IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**In re:**

VINCENT D. SHELTON,

Debtor,

DEIDRE W. FRANCIS, TRUSTEE OF THE  
WINNIE WELBORN TRUST,

Plaintiff,

v.

VINCENT D. SHELTON,

Defendant.

Case No. 14-31975

Chapter 7

Adversary No. 15-03043

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made effective on the date of signing, by and between Vincent Shelton ("Debtor/Defendant") and Deidre W. Francis, Trustee of The Winnie Welborn Trust ("Creditor") (hereinafter referred to collectively as "the parties") and resolves the adversarial proceeding pending as captioned above and amends and supersedes the original Contract/Closing Book (Hereinafter referred to as the "Original Contract," which is attached hereto as *Exhibit A*), entered into by the Debtor and the Creditor on **September 9, 2012**.

**RECITALS**

**WHEREAS**, Creditor filed this Adversarial Proceeding against the Debtor and desires to enter into this Agreement to fully and finally resolve the Proceeding which is Adversary No. 15-03043;

**WHEREAS**, Creditor desires to accept this Agreement for repayment of the in accordance with the terms and conditions contained herein as good and valuable consideration to support this agreement and Debtor agrees to accept the terms of payment herein, which will **not** be discharged by the Chapter 7 Bankruptcy Proceeding Case No. 14-31975 and which will remain due and payable according to the amortization schedule attached hereto as *Exhibit B*;

**NOW THEREFORE**, in consideration of the mutual covenants and benefits herein contained, the receipt and sufficiency is hereby acknowledged, and subject to the approval of the Bankruptcy Court on motion of the parties, Debtor and Creditor agree as follows:

1. **Terms.** In connection with the Original Contract, Debtor also executed a certain Sales Assistance Agreement and Master Security Agreement. Said agreements are incorporated herein by reference and made a part hereof as ***Exhibit C***, and all defined terms contained in said Sales Assistance Agreement and Master Security Agreement shall have the same meaning when used herein, unless otherwise defined. Creditor also executed a Purchase Application, Purchase Assistance Agreement and a Disclosure of Risks, which are also incorporated herein by reference and made a part hereof. All defined terms contained in said Purchase Application and Purchase Assistance Agreement, and Disclosure of Risks (as well as any Amended Disclosure of Risks) shall have the same meaning when used herein, unless otherwise defined.

2. **Debtor's Acknowledgement of Breach.** Debtor acknowledges and agrees that he breached the Original Contract and failed to remit to Creditor certain Payments required under that Original Contract.

3. **Defendant Debtor's Obligations.** As a result of said breaches (as detailed in Item 3 above) and as good and valuable consideration for this agreement, Debtor agrees to make all payments to Creditor as set forth on the amortization schedule attached hereto as ***Exhibit B*** and incorporated herein by reference, beginning on or before June 1, 2016, to re-direct his payments under said contract back to the Escrow Agent on or before June 15, 2016 as set forth in the Original Contract so that the July 1, 2016 is received by the Escrow Agent. Debtor further agrees that his obligations under this paragraph and, subject to the modifications contained herein, Debtor's obligations under the Sales Assistance Agreement and Master Security Agreement, shall be excepted from discharge and shall not be discharged through the above-captioned bankruptcy proceeding. Debtor consents to the entry of an order of the Bankruptcy Court approving this Agreement and directing Debtor to comply fully with the terms thereof.

4. **Acknowledgments.** Debtor and Creditor expressly acknowledge and agree to the following:

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- a) Debtor intends to actually receive disbursement of every payment described under the Original Contract and this Settlement Agreement, Debtor shall retain at all times complete control over the payments and the underlying payment source described herein, and Debtor intends to sell every payment described herein to Creditor after actual receipt of disbursement.
  - b) Both Creditor and Debtor intend that the transaction(s) contemplated by the Original Contract and this Settlement Agreement shall constitute valid sale(s) of payments and shall not constitute impermissible assignment(s), transfer(s), or alienation of benefits by Debtor as contemplated by applicable laws; however, certain risks exist.
  - c) By executing this Agreement, Creditor and Debtor acknowledge and agree that Creditor and Debtor are aware of and expressly accept all risks associated with the transaction(s) contemplated herein.
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5. **Indemnification.** Should the Debtor, in any way, breach this Agreement, Debtor consents and agrees to indemnify and hold harmless the Creditor for all expenses the Creditor or its agents and attorney may reasonably incur to enforce this Agreement.

6. **Liquidated Damages.** It is acknowledged that the Creditor is relying upon Debtor's inherent duty of good faith and fair dealing in the making and execution of this contract. Debtor also recognizes that failure on Debtor's part to abide by this contract will cause the Creditor to incur substantial consequential and economic damages and losses of types and in amounts which may be impossible to compute and ascertain with certainty as a basis for recovery by the owner of actual damages. Accordingly, liquidated damages represent a fair, reasonable and appropriate remedy for said damages. Debtor agrees that liquidated damages may be assessed and recovered by the Creditor against the Debtor without the Creditor being required to present any evidence of the amount or character of actual damages sustained by reason thereof. Accordingly, Debtor shall be liable to the Creditor for payment of liquidated damages in the amount double the amount of the income stream payment for each income stream payment that Debtor misdirects or prevents Creditor from receiving from this date forward. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.

7. **Entire Agreement.** Neither party has been induced to enter into this Agreement by any covenant, representation, nor warranty not specifically set forth herein. This Agreement amends all prior agreements, arrangements and understandings, whether oral or written, and all other communications between Debtor and Creditor concerning the subject matter hereof as set forth herein. This agreement amends the Original Contract attached hereto as Exhibit A. No further modification, waiver, release, rescission, or Agreement of any provision of this Agreement shall be made except by a written instrument duly executed by each of the parties hereto.

8. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Defendant Debtor, Creditor, and their respective agents, successors, heirs, and assigns.

9. **Severability.** Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and the remainder of this Agreement shall remain in full force and effect.

10. **Counterparts.** This Agreement may be executed in two or more counterparts which, when taken together, shall be deemed an original and constitute one and the same document. Furthermore, a facsimile or other electronic transmission of executed signature pages shall be sufficient to bind the executing party and an original shall not be required for enforcement.

11. **Section Headings.** Section headings contained in this Agreement are inserted for convenience or reference only and shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction, scope of any of the provisions hereof.



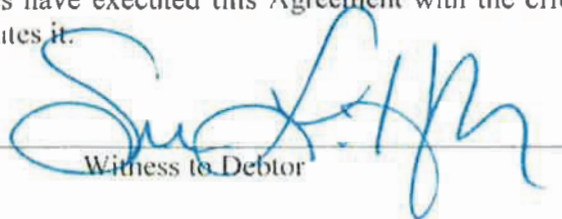
12. **Waiver of Rights.** The parties agree that the failure of any party to enforce or exercise any right, condition, term, or provision of this agreement shall not be construed as or deemed a relinquishment or waiver thereof, and the same shall continue in full force and effect.

13. **Governing Law.** The parties agree that this Agreement, as well as its Exhibits and all other parts of this transaction shall continue to be construed according to the laws of the State of South Carolina, without regard to choice of law principles or the choice of law or venue set forth in the prior agreements which were amended by this agreement.

14. **Release.** In exchange for the consideration and mutual promises herein, **except for the duties, liabilities, agreements and obligations under this Agreement,** Creditor and Defendant Debtor irrevocably and unconditionally, completely and forever releases, discharge, and holds each other harmless for those claims set forth in the Adversarial Proceeding action, as well as claims in any way connected with the facts underlying the action, the allegations set forth in the action and the allegations which could have been made in the action, now known or unknown, as well as claims that may arise in the future, including but not limited to any claims or counterclaims raised therein, whether secured or unsecured, whether now known or unknown, whether suspected or unsuspected and whether or not heretofore asserted which either Creditor or Defendant Debtor now holds or own, or at any time heretofore held or owned, or may at any time hold or own, against Creditor or Defendant Debtor, their partners, subsidiaries, affiliates, parent corporations, agents, employees, officers, directors, shareholders, attorneys, insurers, representatives, heirs, executors, administrators, spouses, principals, predecessors, successors and assigns, as set forth in the complaint, counterclaim and/or all other claims covered by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement with the effective date being the date of the party who last executes it.

  
Debtor's signature

  
Witness to Debtor

Date: 5-25-16

  
Creditor's signature

  
Witness to Creditor

Date: 5-26-2016